

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANTHONY R. WOODS,

**Plaintiff,**

V.

SCOTT RUSSELL, DEPARTMENT OF  
CORRECTIONS,

### Defendants.

No. C11-5667 RBL/KLS

## ORDER TO AMEND OR SHOW CAUSE

This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28

U.S.C. § 636(b)(1), Local Rules MJR 3 and 4. Before the Court for review is Plaintiff's civil rights complaint. ECF No. 6. The Court declines to serve the complaint as it is deficient.

## DISCUSSION

Under the Prison Litigation Reform Act of 1995, the Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); See *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998). A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984). A complaint or portion thereof, will be

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1 dismissed for failure to state a claim upon which relief may be granted if it appears the “[f]actual  
2 allegations . . . [fail to] raise a right to relief above the speculative level, on the assumption that  
3 all the allegations in the complaint are true.” *See Bell Atlantic, Corp. v. Twombly*, 127 S.Ct.  
4 1955, 1965 (2007)(citations omitted). In other words, failure to present enough facts to state a  
5 claim for relief that is plausible on the face of the complaint will subject that complaint to  
6 dismissal. *Id.* at 1974.

7 To state a claim under 42 U.S.C. § 1983, a complaint must allege: (i) the conduct  
8 complained of was committed by a person acting under color of state law and (ii) the conduct  
9 deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the  
10 United States. *Parratt v. Taylor*, 451 U.S. 527, 535, 101 S.Ct. 1908, 687 L.Ed.2d 420 (1981),  
11 *overruled on other grounds*, *Daniels v. Williams*, 474 U.S. 327 (1986). Section 1983 is the  
12 appropriate avenue to remedy an alleged wrong only if both of these elements are present.  
13 *Haygood v. Younger*, 769 F.2d 1350, 1354 (9th Cir. 1985). Plaintiff must also allege facts  
14 showing how individually named defendants caused or personally participated in causing the  
15 harm alleged in the complaint. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981). A  
16 defendant cannot be held liable under 42 U.S.C. § 1983 solely on the basis of supervisory  
17 responsibility or position. *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 694  
18 n.58 (1978). A theory of *respondeat superior* is not sufficient to state a section 1983 claim.  
19 *Padway v. Palches*, 665 F.2d 965, 968 (9th Cir. 1982).

20 In his complaint, Plaintiff purports to sue Scott Russell, the superintendant of the  
21 Washington Correction Center (WCC), where Plaintiff is currently held, and the Washington  
22 Department of Corrections (DOC). Plaintiff alleges that he has more than 180 days of good time  
23 credit, but is being held beyond his release date of July 12, 2011 because he cannot submit an

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1 address of where he will live after his release to community custody. ECF No. 6, p. 3. Plaintiff  
2 also claims that the DOC discriminates against inmates on community custody by requiring that  
3 community custody inmates submit addresses prior to their release but do not require other  
4 inmates to do the same. *Id.* Plaintiff asks to be compensated for each day that he is held past his  
5 earned release date. *Id.*

6 A writ for *habeas corpus*, however, “is the exclusive remedy for a state prisoner who  
7 challenges the fact or duration of his confinement and seeks immediate or speedier release.”  
8 *Heck v. Humphrey*, 512 U.S. 477, 481 (1994); *Neal v. Shimoda*, 131 F.3d 818, 824 (9th Cir.  
9 1997). This is true even though a section 1983 claim is based on “the alleged unconstitutionality  
10 of state administrative action.” *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973). The Supreme  
11 Court has made applicable its holding in *Heck* to the loss of good time credits. *Edwards v.*  
12 *Balistok*, 520 U.S. 641, 643, 646 (1997) (*quoting Heck*, 512 U.S. at 487) (finding challenge to  
13 validity of procedures used to deprive prisoner of his good-time credits not cognizable under §  
14 1983, because it necessarily implied invalidity of deprivation of his good-time credits); see also  
15 *Muhammad v. Close*, 540 U.S. 749, 751 (2004) (noting *Heck* applies in circumstances where  
16 administrative action taken against prisoner could affect credits toward release based on good  
17 time served). Thus, it is only in those cases where a prisoner’s challenge to, for example, the  
18 loss of good time credits “threatens no consequence for his conviction or the duration of his  
19 sentence,” that the requirements of *Heck* do not apply. *Muhammad*, 540 U.S. at 751.

20 As noted above, Plaintiff alleges that he is being denied his right to early release from  
21 confinement. He does not claim, nor does he show, that his conviction or sentence already has  
22 been invalidated by either court or executive order. In addition, any judgment in favor of  
23 plaintiff necessarily would imply the invalidity of his sentence, as the logical consequence of

1 such a judgment would be his release from prison. Accordingly, Plaintiff's claim may be  
2 considered only in a petition for writ of *habeas corpus* and should be dismissed with prejudice  
3 on this basis alone.

4 In addition, prisoners in state custody who wish to challenge the length of their  
5 confinement in federal court by a petition for writ of habeas corpus are first required to exhaust  
6 state judicial remedies, either on direct appeal or through collateral proceedings, by presenting  
7 the highest state court available with a fair opportunity to rule on the merits of each and every  
8 issue they seek to raise in federal court. *See* 28 U.S.C. § 2254(b)(c); *Granberry v. Greer*, 481  
9 U.S. 129, 134 (1987); *Rose v. Lundy*, 455 U.S. 509 (1982); *McNeeley v. Arave*, 842 F.2d 230,  
10 231 (9<sup>th</sup> Cir. 1988).

12 Plaintiff also alleges that the DOC treats prisoners who will be released to community  
13 custody differently from other prisoners by requiring the community custody prisoners to  
14 provide an address prior to their release. ECF No. 6, p. 3. This is insufficient to state a claim of  
15 discrimination. In order to state an equal protection claim under 42 U.S.C. § 1983, a plaintiff  
16 must show that Defendants acted with intent to discriminate. *Sischo-Nownejad v. Merced*  
17 *Community College Dist.*, 934 F.2d 1104, 1112 (9th Cir.1991). The discrimination must be  
18 “intentional or purposeful.” *Grader v. Lynnwood*, 53 Wash.App. 431, 437, 767 P.2d 952 (1989),  
19 *review denied*, 113 Wash.2d 1001, 777 P.2d 1050, cert. denied, 493 U.S. 894, 110 S.Ct. 243, 107  
20 L.Ed.2d 193, *Draper v. Rhay*, 315 F.2d 193, 198 (9th Cir.1963). “This ‘discriminatory purpose’  
21 must be clearly shown since such a purpose cannot be presumed.” *Grader*, 53 Wash.App. at  
22 437.

25 Additionally, a plaintiff must show that he was “treated differently ... because [he]  
26 belonged to a protected class.” *Seltzer-Bey v. Delo*, 66 F.3d 961, 963 (8th Cir.1995) (citing

1      *Divers v. Department of Corrections*, 921 F.2d 191, 193 (8th Cir.1990)). “Indeed, showing that  
2 different persons are treated differently is not enough without more, to show a denial of equal  
3 protection.” *Griffin v. County School Board of Prince Edward Co.*, 377 U.S. 218, 230, 84 S.Ct.  
4 1226, 12 L.Ed.2d 256 (1964). *See also, McLean v. Crabtree*, 173 F.3d 1176 (9<sup>th</sup> Cir. 1999)  
5 (prisoners with immigration detainees who are excluded from participation in community-based  
6 treatment are not a suspect class).

7  
8      Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff  
9 may file an amended complaint curing, if possible, the above noted deficiencies, or show cause  
10 explaining why this matter should not be dismissed no later than **October 21, 2011**. If Plaintiff  
11 chooses to file an amended complaint, which seeks relief cognizable under 42 U.S.C. § 1983, his  
12 amended complaint shall consist of a short and plain statement showing that he is entitled to  
13 relief, and he must allege with specificity the following:

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- 15        1)      the names of the persons who caused or personally participated in causing the  
alleged deprivation of his constitutional rights;
  - 16        2)      the dates on which the conduct of each defendant allegedly took place; and
  - 17        3)      the specific conduct or action Plaintiff alleges is unconstitutional.

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19      Plaintiff shall set forth his factual allegations in separately numbered paragraphs. The  
20 amended complaint shall operate as a complete substitute for (rather than a mere supplement to)  
21 the present complaint. Plaintiff shall present his complaint on the form provided by the Court.  
22 The amended complaint must be legibly rewritten or retyped in its entirety, it should be an  
23 original and not a copy, it may not incorporate any part of the original complaint by reference,  
24 and it must be clearly labeled the “Amended Complaint” and must include the same case number  
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1 as this case. Additionally, Plaintiff must submit a copy of the "Amended Complaint" for service  
2 on each named Defendant.

3 If Plaintiff decides to file an amended civil rights complaint in this action, he is cautioned  
4 that if the amended complaint is not timely filed or if he fails to adequately address the issues  
5 raised herein on or before **October 21, 2011**, the Court will recommend dismissal of this action  
6 as frivolous pursuant to 28 U.S.C. § 1915 and the dismissal will count as a "strike" under 28  
7 U.S.C. § 1915(g). Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who  
8 brings three or more civil actions or appeals which are dismissed on grounds they are legally  
9 frivolous, malicious, or fail to state a claim, will be precluded from bringing any other civil  
10 action or appeal in forma pauperis "unless the prisoner is under imminent danger of serious  
11 physical injury." 28 U.S.C. § 1915(g).

12  
13 If Plaintiff decides that he has no claim for violation of his constitutional rights but that  
14 the relief he seeks is solely related to the restoration of his good time, then he has the option of  
15 filing a writ of habeas corpus. However, he is reminded that before he may file a 2254 petition  
16 for writ of habeas corpus in this Court, he must exhaust his state judicial remedies.  
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18 The Clerk is directed to send Plaintiff forms for the filing of a 42 U.S.C. 1983 civil rights  
19 complaint and a 2254 petition for writ of habeas corpus. The Clerk is further directed to send a  
20 copy of this Order and a copy of the General Order to Plaintiff.  
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22 DATED this 3rd day of October, 2011.

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25 Karen L. Strombom  
26 United States Magistrate Judge